IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2422 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADRESAE KADERIA HAMVIYA RAFAQTUL ULLAM

Versus

COLLECTOR

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Appearance:

MR YN RAVANI for Petitioner

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/04/2001

ORAL ORDER

1. The petitioner herein is aggrieved by an order passed by the Joint Secretary (Appeals), Revenue Department, on March 2, 2001 in SRD/JAMAN/JNDH/113/99, in exercise of revisional powers under section 211 of the Bombay Land Revenue Code, 1879, confirming the order of

the Collector, passed on October 20, 1999, in exercise of powers under Section 79-A of the Land Revenue Code forfeiting land admeasuring 400 sq. metres forming part of survey No.1264/1 of Kodinar, granted to the petitioner by virtue of an order of the Collector, Amreli, dated 17.03.1993 and 01.06.1995, on account of breach of conditions No.6, 7, 9 and 10 of the grant and making of encroachment of a large area of Government land.

2. The relevant facts, in a narrow compass, can be stated thus:

2.1 The petitioner was granted 200 sq. metres of land forming part of survey No.1264/1 by the Collector, Amreli, by virtue of an order passed on 17.03.1993 under new tenure upon certain conditions. Thereafter, the petitioner applied for additional 200 sq. metres of land adjoining the land granted to the petitioner and the Collector Amreli, by order dated 01.06.1995 granted further 200 sq. metres of land under new tenure. Both the grants were with a condition of impartibility. It transpires that, thereafter, the petitioner had applied for further land for plantation of trees and Kodinar Nagar Panchayat, by passing a resolution, recommended that the petitioner may be granted land for the purpose of planting of trees. That application was pending.

2.2 During the inquiry by the Collector, through the Mamlatdar, it is revealed that the petitioner has encroached upon 410 sq. metres of land and has made a Pucca construction over 410 sq. metres of land and Kachha construction over 810 sq. metres of land. The construction which is made is not in accordance with the plans approved. The Collector, therefore, after affording proper opportunity, passed the impugned under Section 79-A of the Land Revenue Code forfeiting the land to the Government, without paying compensation.

2.3 The said order was challenged in revision before the Government and the Joint Secretary (Appeals), Revenue Department, passed the impugned order dated 02.03.2001, confirming the order of the Collector.

3. The petitioner challenges these orders mainly on the ground that the petitioner runs philanthropic activities. That it has spent huge amount on construction of building and that about 273 students are studying in Standard I to VII, who would be affected by the orders and, therefore, the impugned orders may be quashed and set aside.

4. Mr. Y.N. Ravani, learned advocate appearing for the petitioner, has strenuously argued this matter to impress that the powers under Section 79-A are wrongly exercised by the Collector, Junagadh. He submitted that these powers can be exercised only where the occupation is unauthorised or the possession is wrongful and, therefore, these orders, being illegal, must be quashed and set aside. He submitted that the Nagar Panchayat has passed a resolution recommending the grant of land. That the trust has spent huge amount for construction of 14 rooms and, therefore, in light of the decision rendered by this Court in Asoj Soft Caps Pvt. Ltd. v. State of Gujarat & Anr., 1994(1) GCD 671(Guj) (observations in paragraphs 6 and 9) and State of Gujarat & Anr. v. Minesh Land and Estate Corpn., Ahmedabad & Anr., 1985 G.L.H. (U.J.) 40, the case of the petitioner may be sympathetically considered and the petition may be entertained.

5. Having gone through the papers and considering the submissions made by Mr. Ravani, learned advocate for the petitioner, it appears that the petitioner does not deserve any sympathetic treatment. The petitioner has made illegal construction in breach of conditions No.6, 7, 9 and 10 of the grant of land. The petitioner was supposed to make construction only over 40% of the land granted to it. Instead, the petitioner has made construction over 100% of the land granted to it and, as if this is not enough, has made further encroachment and has made construction over another 10 metres of land. Over and above this Pucca construction, Kachha construction is also made over another huge area totalling to about 810 sq. metres of land, as can be seen from Annexure-A - the order of the Collector. It also transpires that the construction which is made is not in accordance with the approved plans. By no stretch of imagination can it be said that the construction is legal or that the occupation is authorised and that Section 79-A of the Code will not be attracted, as argued by learned advocate,Mr. Ravani,for the petitioner and that contention, therefore, cannot be accepted.

6. As regards the contention that huge amount has been spent and that philanthropic activity is being carried out by the petitioner, it may be noted that, however good may be the object, the means therefor have also to be good and legal and legal machinery cannot be used as an instrument in pursuing such activities in manner dehors the law. A loot for a charity is inconceivable in law

and can hardly be encouraged. Simply because a school is being run by the petitioner, no premium can be given to a wrong doer. In the decision in Asoj Soft Caps Pvt. Ltd. (supra), relied upon by learned advocate Mr. Ravani, the question was regarding grant of N.A. permission. In this regard, it was observed that Section 65 of the Code wherein it is provided that, if the Collector does not inform the applicant of his decision on application within a period of three months, the permission applied for (N.A. use) shall be deemed to have been granted and if, thereafter, the applicant spends money on development of the land, that would be a relevant factor. In the instant case, there is no such deeming provision and simply because an application for grant of additional piece of land is made and is pending, the petitioner could not have encroached upon the Government land to such a large extent. Further, in that case, the question was regarding exercise of powers under Section 211 of the Code wherein it was held that it has to be exercised within reasonable time, which is not the case here and, therefore, the said decision cannot help the petitioner. Mr. Ravani contended that the action is taken at a late stage, as the land was granted in 1993 and 1995 respectively, whereas the notice was issued in 1999, which is at a very late stage. Here, it may be noted that the action of the petitioner is illegal and it was during the inquiry that the Collector came to know about such illegal construction and encroachment. It is not clear as to exactly when the encroachment and the illegal construction was made. It is not the case that the development is legally made by virtue of some legal right or sanction. On the contrary, the entire action on part of the petitioner of making Pucca construction over 410 sq. metres of land and Kachha construction over encroached land itself is illegal and, in absence of any material as to when this was done and when it came to the notice of the Collector, it cannot be said that the action is late and that benefit should be given to such institution indulging in encroachment and taking law in its hands.

7. So far as the decision in the case of State of Gujarat & Anr. v. Minesh Land & Estate Corpn., Ahmedabad & Anr., 1985 G.L.H. (U.J.) is concerned, attention of this Court is drawn to head note (B) wherein the Court held that the concerned authorities may sympathetically consider the case for regularisation subject to certain terms and conditions if that would be possible in law. This decision also cannot help the

petitioner, firstly, for the reason that there is no prayer for regularisation before the Collector. Secondly, making of construction over the entire land granted and further making construction on Government land by making an encroachment is no manner legal can be said to be permissible in law for regularisation. The petitioner's case cannot be entertained even in light of these facts. The decision cannot help the petitioner.

8. The contention that the Nagar Panchayat has passed a resolution recommending the grant of additional land also cannot help the petitioner for the reason that the land was applied for the purpose of plantation of trees to help environment and the Panchayat has passed resolution in support of the demand for that noble purpose. Against that, the petitioner has made illegal construction over the land even before it is granted by making an encroachment. The resolution of the Panchayat cannot be read to mean a recommendation for grant of land for any purpose. The contention, therefore, cannot be said to be well founded and cannot be accepted.

9. Mr. Ravani's contention is that the grant of land is cancelled and the land is forfeited to the Government without making any observation as to the requirement of land for some other Government purpose or public purpose. It is relevant to note that the powers are exercised under Section 79-A of the Land Revenue Code which does not require the authority to give any such finding before exercising the powers thereunder and the contention, therefore, cannot be accepted.

10. In light of the above discussion, this petition cannot be entertained. Entertaining of such petition and grant of a high prerogative writ may amount to sending wrong signals to people waiting at the threshold of illegal activities. This Court, therefore, does not entertain this petition. The petition is dismissed in limine.

11. However, the fact that 273 students are studying in the school, who may suffer because of immediate implementation of the order for a wrong committed by the petitioner, cannot be lost sight of and their interest has to be protected to some extent. In order that the interest of the students is protected and that the petitioner may make an alternative arrangement to accommodate the students, it is hereby directed that the

order impugned in this petition will not be implemented till 30th April, 2001, the day on which this academic term is supposed to end. This would protect the interest of the students who are studying in the school, at present.

[ A.L. DAVE, J. ]

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